

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

WJ 8

In the Matter of)	
)	
CROOKED RIVER RANCH WATER)	RULING
COMPANY)	
)	
An Investigation Pursuant to ORS 756.515)	
to Determine Jurisdiction.)	

DISPOSTION:	SCOPE OF ISSUES ESTABLISHED;
	PARTIES DIRECTED TO PRE-FILE
	DOCUMENTARY EXHIBITS

Scope of Issues

In its request for hearing in this matter, Crooked River Ranch Water Company (CRRWC) seeks to address three issues: (1) whether CRRWC is a water association subject to ORS 757.063; (2) whether ORS 757.063 is constitutional; and (3) whether 20 percent of its members signed the petition seeking rate regulation and, if so, were any misled in providing their signature. The Public Utility Commission of Oregon Staff (Staff) contends that the majority of those issues are not appropriate for hearing. It believes the only relevant issue is whether the Commission has received a petition from 20 percent or more of the members of CRRWC, with no inquiry as to the subjective belief of those petitioners.

Having reviewed prehearing briefs filed by both CRRWC and Staff, I reach the following conclusions with regard to the proper scope of issues for hearing:

(1) Is CRRWC a water association subject to ORS 757.063?

CRRWC contends that it is a cooperative exempt from ORS 757.063. Staff disputes CRRWC's assertion, contending that such a claim is contrary to the company's articles of incorporation, bylaws, and positions taken in prior Commission proceedings.

Because ORS 757.063 expressly exempts cooperatives from its provisions, whether CRRWC is a cooperative is question of fact relevant to this proceeding. While Staff believes that it has conclusive evidence to defeat CRRWC's claim, CRRWC must be afforded the opportunity, at hearing, to present its own evidence on this factual question and to rebut Staff's case.

(2) Is ORS 757.063 constitutional?

State agencies have the authority to review the constitutionality of statutes that it may administer. *See Nutbrown v. Munn*, 311 Or 328 (1991). Accordingly, CRRWC may raise the constitutionality of ORS 757.063 in this proceeding. The question is whether this issue is one of fact—appropriate for hearing, or of law—appropriate for briefing.

Based on its filings, CRRWC appears to assert that the statute is unconstitutional on its face. The company’s primary argument seems to be that any law providing a minority of members with the authority to make decisions for the entire association is invalid. There is one factual assertion, however, noted in CRRWC’s earlier filings: the company has determined that 51 percent of its members constitutes a quorum for matters as to how it conducts business. Accordingly, CRRWC may introduce evidence as necessary to support any assertion that ORS 757.063 is unconstitutional as applied to how it conducts business.

(3) Did 20 percent of CRRWC’s members sign the petition?

CRRWC seeks to address three matters related to this question: (1) whether any of the signatures are duplicates; (2) whether the signatures were provided by persons qualified to sign the petition; and (3) whether the signatures were provided in response to knowingly false statements. Staff contends the only relevant issue is whether 20 percent or more of CRRWC’s members have petitioned the Commission for regulation, with no inquiry as to the subjective belief of those petitioners.

Staff’s characterization appears to include CRRWC’s first two issues. Indeed, to determine whether a sufficient number of CRRWC’s members have petitioned for regulation, the Commission must establish that the petitions contain original signatures from at least 20 percent of the members, and that the signatories are current members of the association. *See OAR 860-036-0412(2)*. The question, therefore, is whether the CRRWC may introduce evidence as to false statements that were allegedly made to obtain the signatures.

The Commission has not previously addressed the issue of whether it may declare petition signatures invalid due to fraud or deception in their collection. Obviously, no statute expressly provides such authorization. CRRWC cites ORS 260.555, which prohibits a person collecting signatures on an initiative, referendum or recall petition from knowingly making false statements regarding the contents or meaning of a petition to any person who signs it. Even assuming that statute is applicable for our purposes here, the remedy for a violation of ORS 260.555 appears to be civil penalties, rather than signature invalidation. *See ORS 260.995*. On the other hand, some Oregon cases dealing with election petitions suggest that signatures might be invalidated if intentional fraud is “of considerable magnitude which threatens the purity of the ballot.” *Lindstrom v. Myers*, 273 Or 46 (1975).

At this point in the proceeding, I am reluctant to prohibit CRRWC's challenge to the petitions based on allegations on false statements. Accordingly, CRRWC may present such evidence at hearing. With such evidence, the Commission can review CRRWC's allegations and determine, both factually and legally, whether signatures may be declared invalid due to fraud or deception.

Pre-filing of Evidence

In the prehearing briefs, both CRRWC and Staff identified several documents relevant to this proceeding. These documents include:

- CRRWC's Articles of Incorporation and Restated Articles of Incorporation
- CRRWC's Certificate of Incorporation
- CRRWC's Bylaws
- Pleadings and Commission Order in docket UM 1036
- CRRWC's 501(c)(12) filing with the Internal Revenue Service
- Petitions seeking Commission Regulation

To assist the evidentiary hearing scheduled for August 8, 2006, Staff and CRRWC are directed to identify and provide copies of all documentary evidence they intend to introduce at hearing.¹ Parties may also request the Commission take official notice of any document permitted by OAR 860-014-0050. If desired, parties may also provide copies of pre-filed direct testimony. Copies of such documents must also be filed with the opposing party and be received by August 1, 2006. Objections to any exhibit must be filed by August 4, 2006. This requirement does not preclude the ability of either party from filing additional documentary evidence on rebuttal.

Dated at Salem, Oregon, this 25th day of July 2006.

Michael Grant
Chief Administrative Law Judge

¹ I note that CRRWC attached some of these documents to its prehearing brief. If CRRWC intends to introduce these documents as evidence, it must identify them in its filing, but need not provide additional copies.